

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

**WILLIAM BEAUMONT HOSPITAL
Respondent**

and

Case 07-CA-093885

**JERI ANTILLA, an Individual
Charging Party**

**COUNSEL FOR THE GENERAL COUNSEL'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S DECISION**

Counsel for the General Counsel, pursuant to Section 102.46(e) of the Board's Rules and Regulations, files the following exceptions to the decision of Administrative Law Judge Susan A. Flynn (ALJD), in the above-captioned matter which issued on January 30, 2014. Counsel for the General Counsel excepts to the following:

1. The ALJ's finding that "the Union" is a labor organization within the meaning of Section 2(5) of the Act. (ALJD p. 2, lines 11-12) There is no union involved in this proceeding.
2. The ALJ's finding and conclusion that Antilla's discussion with Alissa Amlin regarding Dusta Dukic (whom the ALJ misidentifies as "Kukic" p. 4, line 32) did not involve concerted activity. (ALJD p. 4, lines 31-33, 35-36).
3. The ALJ's finding and conclusion that Antilla's discussion with Andrews-Johnson regarding Andrew-Johnson's scheduling of a new nurse for triage when Antilla expressed that an experienced nurse was needed did not involve concerted activity. (ALJD p. 4, lines 34-36).

4. The ALJ's finding that there were no allegations of bullying against Diane Glinski. (ALJD p. 5, FN5; (GCX 25(g)); RX26, RX27, RX28)
5. The ALJ's finding and conclusion that Anne Ronk was unaware of discussions amongst staff about new nurses and safety concerns. (ALJD p. 5, lines 20-21)
6. The ALJ's reliance on leading testimony to find that Andrews-Johnson encouraged nurses to come to her with concerns so that matters about staffing and safety issues concerning working with the new nurses could be addressed. (ALJD p. 5, lines 23-25)
7. The ALJ's failure to find and conclude, despite the undisputed evidence, that when Giannosa talked to Wadie, Wadie told her that Antilla and others complained about "A lot of [experienced] RNs going to days. Not a lot of resources on nights," and "RNs are going to jump ship because new RNs are going to affect their licenses bad things are going to happen [sic]." (GCX 27; RX 10) (ALJD p. 6, lines 7-12)
8. The ALJ's failure to find and conclude that Wadie told Giannosa, and Giannosa's notes reflect that Wadie told her, that the nurses' comments were not really bullying. (GCX 26, GCX 27; RX 10) (ALJD p. 6, lines 7-12)
9. The ALJ's failure to draw an adverse inference from the fact that Andrews-Johnson failed to testify with regard to how she selected the nurses she interviewed and failed to corroborate Giannosa's testimony that she instructed her to interview a random selection of nurses. (ALJD p.6, lines 30-31)

10. The ALJ's failure to find and conclude that Andrews-Johnson interviewed nurses who were not new nurses. (ALJD p. 6, lines 20-35)
11. The ALJ's failure to find and conclude that Andrews-Johnson failed to interview nurses with whom Antilla worked regularly. (ALJD p. 6, line 20-35)
12. The ALJ's finding and conclusion that preliminary consensus was reached on October 31, 2012, to terminate Antilla and Brandt and to counsel Post and Wonch. (ALJD p. 6, lines 37-39)
13. The ALJ's failure to find and conclude that a preliminary consensus was reached on October 26, 2012, regarding a "plan of action" to terminate Antilla and Brandt. (ALJD p., 6, lines 37-39)
14. The ALJ's finding and conclusion that initial meetings were held with Antilla and Brandt with the purpose of advising them of the nature of the charges against them and provide them the opportunity to reply or to resign before disciplinary action was taken. (ALJD p. 6, lines 44-46)
15. The ALJ's finding that Amlin was present at the meeting with Brandt, Ronk, and Andrews-Johnson on November 8, 2012. (ALJD p. 9, line 5)
16. The ALJ's failure to find that Amlin was present at the meeting with Antilla, Ronk and Andrews-Johnson on November 9, 2012. (ALJD p. 9, lines 33-34)
17. The ALJ's failure to find and conclude despite the undisputed evidence that, during her meeting with Brandt on November 2, 2012, Ronk represented to Brandt that management was going to complete a thorough investigation of the allegations against Brandt, that management would be speaking with

multiple staff members before making a decision about what action to take, and that the Ronk referred Brandt to classes through Beaumont University.

(GCX34) (ALJD 7, lines 11-22)

18. The ALJ's failure to find and conclude despite the undisputed evidence that, during her meeting with Ronk on November 2, 2012, Brandt shared "multiple issues that she perceive[d were] occurring on the unit. Specifically, she [felt] the new RNs are not receiving enough training in the OR." (GCX 34) (ALJD 7, lines 11-22)
19. The ALJ's failure to find and conclude that, during the meeting between Antilla, Andrews-Johnson, and Amlin on November 5, 2012, Antilla asked what this meant—was she going to lose her job? and Amlin stated that she didn't know, that it might be a one-day suspension. (ALJD p. 7, lines 29-45)
20. The ALJ's failure to draw an adverse inference from Alissa Amlin's failure to testify. (ALJD p. 7, lines 29-45)
21. The ALJ's finding and conclusion that "the final decisions [to terminate Antilla and Brandt] were made at a meeting on November 8, by Ronk Knudsen, and Giannosa, with any [sic] input from Andrews-Johnson and Amlin," when the record is devoid of evidence that any meeting occurred on November 8 at which final decisions were made. (ALJD p. 8, lines 3-5)
22. The ALJ's failure to find that Respondent's witnesses failed to provide any testimony regarding their discussion at the meeting at which final decisions were made to discharge Antilla and Brandt [on November 5, 2012]. (ALJD p. 8, lines 3-8)

23. The ALJ's failure to draw an adverse inference from Respondent's witnesses' lack of testimony regarding the meeting on November 8, 2012. (ALJD p. 8, lines 3-8)
24. The ALJ's finding and conclusion that Giannosa was at the November 8, 2012 meeting when Giannosa testified that she did not recall any meetings after October 31, 2012 (Tr. 50). (ALJD p. 8, lines 3-5)
25. The ALJ's finding and conclusion that the decision to terminate Antilla and Brandt was based on the statements provided by a number of staff nurses in the course of Andrews-Johnson's investigation, as well as the statements by Wadie.(ALJD p. 8, lines 5-8)
26. The ALJ's finding and conclusion that "[a]lthough there was no specific testimony as to which manager drafted the basic termination language, it would appear that it was Andrews-Johnson, as the first-line supervisor and the individual who conducted the investigations." (ALJD p. 8, lines 19-21)
27. The ALJ's assumption, absent record evidence, that Andrews-Johnson drafted "the basic termination language" [of Antilla and Brandt's termination performance improvement plans], when Andrews-Johnson testified, yet failed to testify with regard to that issue. (ALJD p. 8, lines 19-21)
28. The ALJ's finding and conclusion that Brandt was fired for exhibiting mean, nasty, intimidating, and bullying behavior. (ALJD p. 8, lines 27-28; ALJD p. 12, lines 21-22)

29. The ALJ's finding and conclusion that Antilla was fired for exhibiting negative, intimidating, and bullying behavior. (ALJD p. 8, 30-31; ALJD p. 12, lines 22-23)
30. The ALJ's finding and conclusion that Michele Wonch was counseled. (ALJD p. 8, line 33)
31. The ALJ's finding and conclusion that neither Lori Post nor Michele Wonch were terminated because their conduct was not as severe as Antilla and Brandt's. (ALJD p. 8, lines 33-34)
32. The ALJ's apparent adverse inference against the General Counsel in finding and concluding "while it is possible that either [Michele Wonch's] counseling did not occur or that the documentation was not completed due to Knudsen being out on extended medical leave, such is pure speculation as there was no testimony on this point and there is no documentation that it ever occurred." (ALJD p. 8, fn.3)
33. The ALJ's failure to draw an adverse inference against Respondent that Michele Wonch's counseling did not occur where she found that Patricia Knudsen would have been the management official to counsel Wonch (p. 8, line 35), and Respondent called Knudsen to testify, yet failed to question her regarding counseling Wonch. (ALJD p. 8, lines 33-37 and fn.3)
34. The ALJ's failure to consider the explicit language of the performance improvement plan terminating Brandt. (ALJD p. 9, lines 5-16)
35. The ALJ's failure to find and conclude that the language of the performance improvement plan terminating Brandt states that Brandt feels that the newer

RNs were not receiving enough training in the operating room. (ALJD p. 9, 5-16)

36. The ALJ's failure to find and conclude that the performance improvement plan terminating Brandt referenced alleged incidents going back to August 2006. (ALJD p. 9, 5-16)

37. The ALJ's failure to find and conclude that the performance improvement plan terminating Brandt expressly states that Respondent has "zero tolerance" for conduct that is "inappropriate or detrimental to patient care or hospital operations or that impedes harmonious interactions and relationships." (ALJD p. 9, lines 5-16)

38. The ALJ's failure to find and conclude that Brandt was not given the opportunity to give her version of the alleged incidents relied upon in her performance improvement plan terminating her. (ALJD p. 9, lines 5-16)

39. The ALJ's failure to consider the explicit language of the performance improvement plan terminating Antilla. (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

40. The ALJ's failure to find and conclude that the performance improvement plan terminating Antilla states that she is the "ring leader" of negativity on the unit." (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

41. The ALJ's failure to find and conclude that the performance improvement plan terminating Antilla states that "[i]t was reported by multiple co-workers that Antilla engages the senior RN staff on the unit in negative conversations

about other staff members, specifically the newer RNs.” (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

42. The ALJ’s failure to find and conclude that the performance improvement plan terminating Antilla lists “specific behaviors observed by co-workers,” including co-workers reporting that Antilla “talks and acts negatively towards the new RNs,” and “[i]t was reported that Antilla has said she “hates working on the weekends because there are too many new RNs and they are unsafe,” “something bad is going to happen with all these new RNs.” (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

43. The ALJ’s failure to find and conclude that the performance improvement plan terminating Antilla states that, during the November 5 meeting, Antilla stated that she felt graduate nurses should not be allowed to work on the Family Birth Unit and if they are they should have a longer orientation than 12 weeks. (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

44. The ALJ’s failure to find and conclude that the performance improvement plan terminating Antilla referenced that despite addressing piercings with Antilla, she continued to wear a tongue ring. (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

45. The ALJ’s failure to find and conclude, despite un rebutted testimony (Tr. 156-157), that the first time Antilla’s piercing was raised was during the November 5, 2012 meeting. (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

46. The ALJ’s failure to find and conclude that the performance improvement plan terminating Antilla stated that Respondent has “zero tolerance” for

conduct that is “inappropriate or detrimental to patient care or hospital operations or that impedes harmonious interactions and relationships.” (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)

47. The ALJ’s failure to find and conclude that the explicit language of Brandt and Antilla’s performance improvement plans constituted direct evidence of animus towards their protected concerted activities. (ALJD p. 9, lines 5-16; ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)
48. The ALJ’s failure to find and conclude that prior to Antilla’s discharge, the only discipline or counselings she received in the past were for attendance. (ALJD p. 9, lines 33-37; ALJD p. 10, lines 1-18)
49. In considering whether Counsel for the General Counsel met her initial burden, the ALJ’s failure to make a specific finding and conclusion that Brandt and Antilla’s discharges were motivated by their protected concerted activity. (ALJD p. 10, lines 37-45; ALJD p. 11, lines 1-13)
50. The ALJ’s finding and conclusion that “[i]t is arguable whether [Antilla and Brandt’s discussions regarding working conditions] in themselves initially constituted protected concerted activity, as there was no evidence presented that any employee planned to take any action based upon those complaints and there was no concerted purpose, it was mere complaining.” (ALJD p. 10, 40-44)
51. The ALJ’s failure to consider *Meyers II*, 281 NLRB 882, 887 (1986), which states that concerted activity includes “circumstances where individual employees seek to initiate or to induce or to prepare for group action, as well

as individual employees bringing truly group complaints to the attention of management.” (ALJD p. 10, 40-44)

52. The ALJ’s failure to consider that “the object or goal of initiating, inducing or preparing for group action does not have to be stated explicitly when employees communicate,” as set forth in *Hispanics United of Buffalo, Inc.*, 359 NLRB No. 37, at 3 (2012), citing *Relco Locomotives, Inc.*, 358 NLRB No. 37, slip op. at 17 (2012), and *Whittaker Corp.*, 289 NLRB 933, 933 (1988). (ALJD p. 10, 40-44)

53. The ALJ’s failure to find and conclude that Giannosa first learned of Antilla and Brandt’s protected concerted activities through her interview of Tina Wadie. (ALJD p. 11, lines 10-11)

54. The ALJ’s finding and conclusion that Respondent established that Antilla and Brandt would have been terminated absent their protected concerted activity. (ALJD p. 11, lines 15-16)

55. In finding and concluding that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity, the ALJ’s reliance on the fact that Post and Wonch were not terminated when they engaged in “similar discussions complaining about working conditions” when she earlier (ALJD p. 8, lines 33-34) found their behavior was “not as severe” as Antilla and Brandt’s. (ALJD p. 11, lines 18-24)

56. In finding and concluding that Respondent met its burden in establishing that Antilla and Brandt would have been terminated absent their protected

concerted activity, the ALJ's reliance on the fact that Post and Wonch were not terminated when Antilla was identified as the "ringleader of negativity." (ALJD p. 11, lines 18-24)

57. In finding and concluding that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity, the ALJ's reliance on the fact that Respondent did not "weed out" all employees engaged in protected concerted activities, contrary to established Board law, which the ALJ failed to distinguish. (ALJD p. 11, lines 18-24)
58. In finding and concluding that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity, the ALJ's finding and conclusion that management did not discourage "such conversations" among the staff. (ALJD p. 11, lines 26-27)
59. In finding and concluding that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity, the ALJ's finding that both Antilla and Brandt agreed that management did not discourage "such conversations" among the staff. (ALJD p. 11, lines 26-27)
60. In finding and concluding that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity, the ALJ's finding and conclusion that "the reasons that management has given for the terminations are significant and credible, and were sufficient to justify the terminations." (ALJD p. 11, lines 29-30)

61. The ALJ's "disagreement" that the allegations of negativity were directed toward protected concerted activity. (ALJD p. 11, lines 31-32)
62. In considering Antilla and Brandt's alleged misconduct, the ALJ's failure to consider or distinguish controlling Board precedent of *Hispanics United of Buffalo, Inc.*, supra at 3, citing *Consolidated Diesel*, 332 NLRB 1019, 1020 (2000), enfd. 263 F.3d 345 (4th Cir. 2001), which states that "legitimate managerial concerns to prevent harassment do not justify policies that discourage the free exercise of Section 7 rights by subjecting employees to . . . discipline on the basis of the subjective reactions of others to their protected activity." (ALJD p. 11, lines 29-43; ALJD p. 12, lines 21-32; ALJD p. 12, lines 40-43)
63. The ALJ's overruling of Counsel for the General Counsel's objection to the double hearsay nature of the nurses' "statements" prepared by Andrews-Johnson, then her reliance upon them for the truth of the matter asserted in them. (Tr. 463-465; ALJD p. 12, lines 18-19)
64. The ALJ's credibility resolution finding that the nurses whose statements she admitted over Counsel for the General Counsel's double hearsay objection (Tr. 463-465) "had no reason to fabricate their reports," when those nurses failed to testify. (ALJD p. 12, lines 18-19)
65. The ALJ's reliance upon the alleged subjective reactions of other employees to Antilla and Brandt's protected concerted activities to find that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity. (ALJD p. 12, lines 46-

47-ALJD p. 13, line 1; ALJD p. 12, lines 21-25; ALJD p. 12, lines 27-32;
ALJD p. 12, lines 40-43)

66. The ALJ's finding and conclusion that Antilla and Brandt were terminated due to inappropriate conduct toward other employees, having "nothing whatever [sic] to do with workplace grievances." (ALJD p. 12, lines 27-29)
67. The ALJ's failure to consider or distinguish controlling Board precedent of *Hispanics United of Buffalo, Inc.*, supra, in finding and concluding that "Antilla and Brandt failed to interact with other staff in a professional manner, that was part of the cause for Wadie's resignation, and were uncooperative with other staff, worsening the situation about which they were purportedly so concerned." (ALJD p. 12, lines 28-31)
68. The ALJ's finding and conclusion that "negative behavior meant the negative behavior exhibited toward the new nurses, belittling, condescending, and demeaning behavior. That is entirely distinct from complaining about working conditions." (ALJD p. 12, lines 21-25)
69. The ALJ's reliance upon the fact that Respondent encouraged employees to share staffing concerns in Respondent-sanctioned ways to find that the fact Antilla was discussing staffing concerns was "not of concern" to Anne Ronk. (ALJD p. 12, lines 34-40; ALJD p. 13, fn 7)
70. The ALJ's apparent finding and conclusion at ALJD p. 12, lines 46-47 that Andrews-Johnson made the decision to terminate Antilla and Brandt, which appears to be at odds with her finding and conclusion that Ronk, Knudsen,

and Giannosa made the decision to terminate them “with any input from Andrews-Johnson and Amlin” at ALJD p. 8, lines 1-5.

71. The ALJ’s finding and conclusion that “the fact that Antilla and Brandt had discussed their concerns with each other, with [Andrews-Johnson], or with other nurses was not a factor in the decision terminate their employment.” (ALJD p. 13, line 1-3)
72. The ALJ’s finding and conclusion that there is no policy prohibiting staff from discussing with each other any issues or concerns. (ALJD p. 13, fn 7)
73. The ALJ’s finding and conclusion “that the only area where management was not in agreement with [Antilla and Brandt’s] concerns was about the risk of losing their nursing licenses due to a mistake by another nurse. However, I find that expressing that misplaced fear was not a factor in the decisions to terminate Antilla and Brandt, and that they would have been terminated even in the absence of making such statements.” (ALJD p. 13, lines 5-12)
74. The ALJ’s finding and conclusion that expressed concerns about nurses losing their licenses were not a factor in deciding to terminate Antilla and Brandt when Giannosa’s notes of Wadie’s feedback, which the ALJ earlier found Respondent relied upon in deciding to terminate Antilla and Brandt (ALJD p. 12, lines 46-47; p.8, lines 5-7), explicitly references these comments.
75. The ALJ’s finding and conclusion, contrary to controlling Board precedent in *Parr Lance Ambulance Service*, 262 NLRB 1284, 1286-1287 (1982), that Antilla and Brandt’s concerns about nurses losing their licenses constituted “misplaced fear.” (ALJD p. 13, lines 10-12)

76. The ALJ's failure to find and conclude that the nurses' statements relied upon by management in deciding to terminate Antilla and Brandt contained complaints of Antilla and Brandt's protected concerted activities and employees' subjective reactions to them. (ALJD p. 8, lines 5-8; ALJD p. 12, lines 18-19; ALJD p. 12, lines 46-47, ALJD p. 13, lines 1-3)
77. The ALJ's failure to find and conclude that the Giannosa's notes regarding the reasons for Tina Wadie's resignation relied upon by management in deciding to terminate Antilla and Brandt contained complaints of Antilla and Brandt's protected concerted activities and her subjective reactions to them. (ALJD p. 8, lines 5-8; ALJD p. 12, lines 15-16; ALJD p. 12, lines 46-47, ALJD p. 13, lines 1-3)
78. The ALJ's finding and conclusion that Tina Wadie's statement that the conduct at issue "wasn't really bullying" was of "no consequence." (ALJD p. 13, lines 14-15)
79. In finding and concluding that Respondent met its burden establishing that Antilla and Brandt would have been terminated absent their protected concerted activity, the ALJ's failure to identify what specific conduct, other than protected concerted activity and employees' subjective reactions to that protected concerted activity, constituted the conduct Respondent relied upon in terminating Antilla and Brandt. (ALJD p. 11, lines 37-39; ALJD p. 12, lines 23-24; ALJD p. 12, lines 27-31; ALJD p. 13, lines 15-16)

80. The ALJ's finding and conclusion that Antilla and Brandt were given "descriptions of the conduct and statements at issue, and were given the opportunity to ask questions." (ALJD p. 13, lines 18-20)
81. The ALJ's finding and conclusion that Brandt asked no questions and elected not to present a defense. (ALJD p. 13, lines 20-21)
82. The ALJ's finding and conclusion that Respondent's positive assessments of Antilla and Brandt's work performance prior to learning of their protected concerted activities and employees' subjective reactions to their protected concerted activities were "immaterial." (ALJD p. 13, lines 24-35)
83. The ALJ's failure to find and conclude that Antilla and Brandt were not confronted with the fact that there were accusations against them until after the decision had been made to terminate them. (ALJD p. 13, lines 18-20; ALJD p. 13, lines 37-42; ALJD p. 14, lines 1-6)
84. The ALJ's failure to find and conclude that the un rebutted evidence establishes that the only accusations close to specific which Antilla was given prior to her termination were with reference to her protected concerted activities—specifically comments regarding her nursing license being on the line, "being verbally negative in regards to the safety of the unit, [and] expressing to other staff that graduate nurses should not be in [] specialty areas such as labor and delivery." (ALJD p. 13, lines 18-22)
85. The ALJ's finding and conclusion that the reason Antilla was characterized a "**ringleader**" had nothing to do with her complaints about working conditions, and her invention of what she believed Respondent meant by

characterizing Antilla as a “**ringleader of negativity**,” when Respondent’s witnesses failed to define what they meant by their use of that term. (ALJD p. 13, lines 31-32)

86. The ALJ’s finding and conclusion that the investigation was not suspect. (ALJD p. 13, lines 37-42; ALJD p. 14, lines 5-6)

87. The ALJ’s failure to find and conclude that the investigation was suspect. (ALJD p. 13, lines 37-42; ALJD p. 14, lines 1-6)

88. The ALJ’s finding and conclusion that it was irrelevant that only some of the new nurses were interviewed, and some of the interviewees were not new nurses. (ALJD p. 13, lines 37-40)

89. The ALJ’s finding and conclusion that “positive or neutral reports would not cancel out the negative reports already received.” (ALJD p. 13, lines 39-40)

90. The ALJ’s finding and conclusion that there was “not a scintilla of evidence presented that Andrews-Johnson improperly selected interviewees or that any interviewees’ report was improperly influenced” when Andrews-Johnson failed to testify with regard to any interview of any employee and the employee reports were entered over Counsel for the General Counsel’s double hearsay objection. (Tr. 463-465) (ALJD p. 13, lines 40-42)

91. The ALJ’s failure to find and conclude that the investigation was suspect when Ronk contacted Knudsen on October 29, after the preliminary decision was made to terminate Antilla, looking for “further evidence” that could be used against Antilla. (ALJD p. 13, line 42-ALJD p. 14, lines 1-6)

92. The ALJ's failure to find and conclude that the investigation was suspect when the "preliminary consensus" to terminate Antilla and Brandt was made before speaking with Antilla and Brandt. (ALJD p. 13, lines 37-42; ALJD p. 14, lines 1-6)
93. The ALJ's failure to find and conclude that the investigation was suspect when Andrews-Johnson continued to collect statements from employees, even after the decision was made to terminate Antilla and Brandt, including a statement from Maggie Fullington on November 7, which was included in Brandt's termination performance improvement plan as a reason for her discharge. (ALJD p. 13, lines 37-42; ALJD p. 14, lines 1-6)
94. The ALJ's failure to find that Respondent's deviation from its progressive discipline and "zero tolerance" policies established that Respondent tolerated, and continued to tolerate, "intimidating" and "bullying" behavior that did not involve protected concerted activity. (ALJD p. 14, lines 8-11)
95. The ALJ's finding and conclusion that "no comparable situation had arisen in the past." (ALJD p. 14, lines 9-10)
96. The ALJ's finding and conclusion that Respondent's failure to terminate Wonch "hardly supports the General Counsel's allegation of retaliatory discharge, since Wonch engaged in the same discussions as Antilla and Brandt, and made the same complaints." (ALJD p. 14, lines 13-16)
97. The ALJ's finding and conclusion that Respondent's counsel's addition of a new justification for terminating Brandt in his Position Statement (GCX37) during the investigation of the instant charge, which was admittedly not relied

upon at the time of her termination, was “counsel’s opinion,” and not a shifting reason. (ALJD p. 14, lines 21-24)

98. The ALJ’s finding and conclusion that the “piling on” of reasons in Antilla and Brandt’s termination performance improvement plans did not amount to different or shifting reasons. (ALJD p. 14, lines 24-29)

99. The ALJ’s recommendation that the charges be dismissed as to Antilla and Brandt’s discharges. (ALJD p. 14, line 31)

100. The ALJ’s failure to find that and conclude that a reasonable employee would read the introductory paragraph of the Code of Conduct for Surgical Services and Perianesthesia (“Code”) to discourage protected concerted activities. (ALJD p. 17, lines 27-33)

101. The ALJ’s failure to find and conclude that the introductory paragraph of the Code violated Section 8(a)(1) of the Act. (ALJD p. 17, lines 27-33)

102. The ALJ’s finding and conclusion that the rules within the Code are put in context via reference to “legitimate business concerns (i.e., patient care, hospital operations, and a safe healing environment), that would tend to restrict their application.” (ALJD p. 17, lines 27-33)

103. The ALJ’s finding and conclusion that the Code’s prohibition against “[w]illful and intentional threats, intimidation, harassment, humiliation, or coercion of employees, physicians, patients, or visitors” is “clear and legitimate, and cannot reasonably be read in context to prohibit protected activities.” (ALJD p. 18, lines 5-13)

104. The ALJ's finding and conclusion that the Code's prohibition against "[p]ropane and abusive language directed at employees, physicians, patients, or visitors" is "clear and legitimate, and cannot reasonably be read in context to prohibit protected activities." (ALJD p. 18, lines 5-13)
105. The ALJ's finding and conclusion that the Code's prohibition against "[b]ehavior that is rude, condescending, and otherwise socially unacceptable. Intentional misrepresentation of information" [sic] is "clear and legitimate, and cannot reasonably be read in context to prohibit protected activities." (ALJD p. 18, lines 5-13)
106. The ALJ's finding and conclusion that the Code's prohibition against "[n]egative or disparaging comments about the moral character or professional capabilities of an employee or physician made to employees, physicians, patients, or visitors" is "clear and legitimate, and cannot reasonably be read in context to prohibit protected activities." (ALJD p. 18, lines 5-13)
107. The ALJ's recommendation that the allegation that the Code's prohibition against "[w]illful and intentional threats, intimidation, harassment, humiliation, or coercion of employees, physicians, patients, or visitors" violated Section 8(a)(1) be dismissed. (ALJD p. 18, lines 15-18)
108. The ALJ's failure to find and conclude that the Code's prohibition against "[w]illful and intentional threats, intimidation, harassment, humiliation, or coercion of employees, physicians, patients, or visitors" violated Section 8(a)(1) of the Act. (ALJD p. 18, lines 15-18; ALJD p. 19, lines 14-27)

109. The ALJ's recommendation that the allegation that the Code's prohibition against "[p]ropane and abusive language directed at employees, physicians, patients, or visitors" violated Section 8(a)(1) be dismissed. (ALJD p. 18, lines 15-18)
110. The ALJ's failure to find and conclude that that the Code's prohibition against "[p]ropane and abusive language directed at employees, physicians, patients, or visitors" violated Section 8(a)(1) of the Act. (ALJD p. 18, lines 15-18; ALJD p. 19, lines 14-27)
111. The ALJ's recommendation that the allegation that the Code's prohibition against "[b]ehavior that is rude, condescending, and otherwise socially unacceptable. Intentional misrepresentation of information" [sic] violated Section 8(a)(1) of the Act be dismissed. (ALJD p. 18, lines 15-18)
112. The ALJ's failure to find and conclude that the Code's prohibition against "[b]ehavior that is rude, condescending, and otherwise socially unacceptable. Intentional misrepresentation of information" [sic] violated Section 8(a)(1) of the Act. (ALJD p. 18, lines 15-18; ALJD p. 19, lines 14-27)
113. The ALJ's recommendation that the allegation that the Code's prohibition against that the Code's prohibition against "[n]egative or disparaging comments about the moral character or professional capabilities of an employee or physician made to employees, physicians, patients, or visitors" violated Section 8(a)(1) of the Act be dismissed. (ALJD p. 18, lines 15-18)
114. The ALJ's failure to find and conclude that the Code's prohibition against "[n]egative or disparaging comments about the moral character or

professional capabilities of an employee or physician made to employees, physicians, patients, or visitors” violated Section 8(a)(1) of the Act. (ALJD p. 18, lines 15-18; ALJD p. 19, lines 14-27)

115. The ALJ’s failure to include a remedy including backpay, reinstatement, and a notice posting for Respondent’s discharge of Antilla and Brandt in violation of Section 8(a)(1) of the Act. (ALJD p. 19, 30-41-ALJD p. 20, lines 13-34)

116. The ALJ’s failure to include a remedy including rescission of the Code’s introductory paragraph, and the Code’s prohibitions against:

(a) “[w]illful and intentional threats, intimidation, harassment, humiliation, or coercion of employees, physicians, patients, or visitors;” (b) “[p]rofan and abusive language directed at employees, physicians, patients, or visitors;” (c) “[b]ehavior that is rude, condescending, and otherwise socially unacceptable. Intentional misrepresentation of information [sic];” and (d) “[n]egative or disparaging comments about the moral character or professional capabilities of an employee or physician made to employees, physicians, patients, or visitors,” and rescission of any disciplines as a result of enforcement of those provisions of the Code. (ALJD p. 19, 30-41-ALJD p. 20, lines 13-34)

117. The ALJ’s failure to include a remedy including rescission of any discipline issued as a result of enforcement of the provisions of the Code she found unlawful, specifically “Verbal comments or physical gestures directed at others that exceed the bounds of fair criticism, and “Behavior . . . that is

counter to promoting teamwork.” (ALJD p. 19, 30-41-ALJD p. 20, lines 13-34)

The portions of the record and authority relied upon to support these Exceptions are contained in the accompanying supporting brief.

Counsel for the General Counsel respectfully requests that the Board grant the above Exceptions and modify the Administrative Law Judge’s Decision accordingly.

Respectfully submitted this 27th day of March 2014.

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CERTIFICATE OF SERVICE

I certify that on the 27th day of March, 2014, I electronically served copies of the **Counsel for the General Counsel's Exceptions to the Administrative Law Judge's Decision** on the following parties of record:

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